IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.428 OF 2005.
WITH
CRIMINAL APPLICATION NO.429 OF 2005
CRIMINAL APPLICATION NO.430 OF 2005
CRIMINAL APPLICATION NO.431 OF 2005
CRIMINAL APPLICATION NO.434 OF 2005
CRIMINAL APPLICATION NO.435 OF 2005
CRIMINAL APPLICATION NO.436 OF 2005

Deepak G. Kedia. ... Applicant.

V/s.

State of Maharashtra & Anr. ... Respondents.

Mr. R. Satyanarayan, Advocate for the Applicant in all applications.

Mr. D.P.Adsule, APP for State in all applications.

None for Respondent.

CORAM : V.M.KANADE,J
DATE : MARCH 18,2005.

P.C. :

1. Heard the counsel appearing for applicant in all applications. The applications have been filed for challenging the order of issuance of process passed by the learned Magistrate on complaint being filed under Section 138 of the N.I. Act. Two submissions are made by the learned counsel appearing for the applicant. First submission is that present

applicant in the present applications had resigned on 30/3/1997 and the cheques were issued subsequently. It is submitted that cheques were issued on 17/12/2000 and therefore, it is submitted that on the date on which the cheques were issued, the petitioner was neither incharge of the affairs of the company nor responsible for issuance of the said cheques. The learned counsel has relied on Form-32 which is annexed at page-48 which indicates that the petitioner resigned on 30/3/1997. The second submission made by the the learned advocate on behalf of the applicant is that the averments which are made in the complaint in paragraph-1 do not spell out any offence as contemplated under section 141 of the N.I.Act. Paragraph-1 reads as under :

> "1. The Accused No.1 is a Company and Accused No.2 and 3 are Directors of company and responsible for the conduct of the business of the Company at the time of offence was committed and having their addresses given in the title hereinabove. The Accused approached the Complainants for finance for the purchase of machineries as detailed in Annexture to the Agreement on lease rental basis. Accordingly, Lease Agreement was executed on 17.01.1997 between the Complainants and the Accused. The Lease Agreement was for Rs.37,04,940.00(Rupees Thirty seven lacs four thousand nine hundred forty only) and amounts were payable in monthly instalments of Rs.1,00,125.00 each as per the repayment schedule to the Lease Agreement. The Complainants rely upon the said agreement as and when produced before this Honourable Court."

2. It is submitted that in view of the Judgment of the Apex Court, averments being insufficient, no case is made out in the present applications and therefore, process was liable to be quashed. visa-vis. I am unable to accept the contention made by the learned counsel for applicant. The trial court has given cogent reason for rejecting the contention. The first contention of the applicant that has been confirmed by the Sessions Court in revision. In my view, it will be difficult to decide whether the applicant was in fact incharge and responsible for the business of the company at the time when this offence was committed. The complainant in reply to his application for recall of process contended in his reply that applicant was director when the original agreement was executed. It is also contended that he has given personal undertaking for repayment of the dues on behalf of the company and that the original lease agreement has been executed by the applicant on behalf of the accused company. Thus the question whether the petitioner had disassociated himself from the affairs of the company would be a fact which would have to be established in the trial court. The said contention therefore, cannot be accepted. So far as the second contention regarding averments which are

made in the complaint are concerned, in my view, sufficient averments are made in paragraph 1 of the complaint and that question also will have to be decided after the evidence is adduced by both the parties. Further there is concurrent findings given by both the courts below on this issue. Therefore, I do not find any reason to interfere with the orders of the courts below while exercising the jurisdiction of this Court under section 482 of the Cr.P.C. Accordingly, Criminal applications are rejected.

(V.M.KANADE,J)